



House of Representatives

General Assembly

File No. 17

February Session, 2008

House Bill No. 5146

House of Representatives, March 11, 2008

The Committee on Environment reported through REP. ROY, R. of the 119th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING INLAND WETLANDS AGENCY REPORTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (g) of section 8-3 of the 2008 supplement to the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective from passage*):

4 (g) The zoning regulations may require that a site plan be filed with
5 the commission or other municipal agency or official to aid in
6 determining the conformity of a proposed building, use or structure
7 with specific provisions of such regulations. If a site plan application
8 involves an activity regulated pursuant to sections 22a-36 to 22a-45,
9 inclusive, the applicant shall submit an application for a permit to the
10 agency responsible for administration of the inland wetlands
11 regulations not later than the day such application is filed with the
12 zoning commission. The commission shall, within the period of time
13 established in section 8-7d of the 2008 supplement to the general
14 statutes, accept the filing of and shall process, pursuant to section 8-7d
15 of the 2008 supplement to the general statutes, any site plan

16 application involving land regulated as an inland wetland or
17 watercourse under chapter 440. The decision of the zoning commission
18 shall not be rendered on the site plan application until the inland
19 wetlands agency has submitted a report with its final decision. In
20 making its decision, the commission shall [consider] give due
21 consideration to the report of the inland wetlands agency and if the
22 commission establishes terms and conditions for approval that are not
23 consistent with the final decision of the inland wetlands agency, the
24 commission shall state on the record the reason for such terms and
25 conditions. A site plan may be modified or denied only if it fails to
26 comply with requirements already set forth in the zoning or inland
27 wetlands regulations. Approval of a site plan shall be presumed unless
28 a decision to deny or modify it is rendered within the period specified
29 in section 8-7d of the 2008 supplement to the general statutes. A
30 certificate of approval of any plan for which the period for approval
31 has expired and on which no action has been taken shall be sent to the
32 applicant within fifteen days of the date on which the period for
33 approval has expired. A decision to deny or modify a site plan shall set
34 forth the reasons for such denial or modification. A copy of any
35 decision shall be sent by certified mail to the person who submitted
36 such plan within fifteen days after such decision is rendered. The
37 zoning commission may, as a condition of approval of any modified
38 site plan, require a bond in an amount and with surety and conditions
39 satisfactory to it, securing that any modifications of such site plan are
40 made or may grant an extension of the time to complete work in
41 connection with such modified site plan. The commission may
42 condition the approval of such extension on a determination of the
43 adequacy of the amount of the bond or other surety furnished under
44 this section. The commission shall publish notice of the approval or
45 denial of site plans in a newspaper having a general circulation in the
46 municipality. In any case in which such notice is not published within
47 the fifteen-day period after a decision has been rendered, the person
48 who submitted such plan may provide for the publication of such
49 notice within ten days thereafter. The provisions of this subsection
50 shall apply to all zoning commissions or other final zoning authority of

51 each municipality whether or not such municipality has adopted the
52 provisions of this chapter or the charter of such municipality or special
53 act establishing zoning in the municipality contains similar provisions.

54 Sec. 2. Section 8-26 of the 2008 supplement to the general statutes is
55 repealed and the following is substituted in lieu thereof (*Effective from*
56 *passage*):

57 (a) All plans for subdivisions and resubdivisions, including
58 subdivisions and resubdivisions in existence but which were not
59 submitted to the commission for required approval, whether or not
60 shown on an existing map or plan or whether or not conveyances have
61 been made of any of the property included in such subdivisions or
62 resubdivisions, shall be submitted to the commission with an
63 application in the form to be prescribed by it. The commission shall
64 have the authority to determine whether the existing division of any
65 land constitutes a subdivision or resubdivision under the provisions of
66 this chapter, provided nothing in this section shall be deemed to
67 authorize the commission to approve any such subdivision or
68 resubdivision which conflicts with applicable zoning regulations. Such
69 regulations may contain provisions whereby the commission may
70 waive certain requirements under the regulations by a three-quarters
71 vote of all the members of the commission in cases where conditions
72 exist which affect the subject land and are not generally applicable to
73 other land in the area, provided that the regulations shall specify the
74 conditions under which a waiver may be considered and shall provide
75 that no waiver shall be granted that would have a significant adverse
76 effect on adjacent property or on public health and safety. The
77 commission shall state upon its records the reasons for which a waiver
78 is granted in each case.

79 (b) The commission may establish a schedule of fees and charge
80 such fees. The amount of the fees shall be sufficient to cover the costs
81 of processing subdivision applications, including, but not limited to,
82 the cost of registered or certified mailings and the publication of
83 notices, and the costs of inspecting subdivision improvements. Any

84 schedule of fees established under this section shall be superseded by
85 fees established by ordinance under section 8-1c.

86 (c) The commission may hold a public hearing regarding any
87 subdivision proposal if, in its judgment, the specific circumstances
88 require such action. No plan of resubdivision shall be acted upon by
89 the commission without a public hearing. Such public hearing shall be
90 held in accordance with the provisions of section 8-7d of the 2008
91 supplement to the general statutes.

92 (d) The commission shall approve, modify and approve, or
93 disapprove any subdivision or resubdivision application or maps and
94 plans submitted therewith, including existing subdivisions or
95 resubdivisions made in violation of this section, within the period of
96 time permitted under section 8-26d. Notice of the decision of the
97 commission shall be published in a newspaper having a substantial
98 circulation in the municipality and addressed by certified mail to any
99 person applying to the commission under this section, by its secretary
100 or clerk, under his signature in any written, printed, typewritten or
101 stamped form, within fifteen days after such decision has been
102 rendered. In any case in which such notice is not published within
103 such fifteen-day period, the person who made such application may
104 provide for the publication of such notice within ten days thereafter.
105 Such notice shall be a simple statement that such application was
106 approved, modified and approved or disapproved, together with the
107 date of such action. The failure of the commission to act thereon shall
108 be considered as an approval, and a certificate to that effect shall be
109 issued by the commission on demand. The grounds for its action shall
110 be stated in the records of the commission. No planning commission
111 shall be required to consider an application for approval of a
112 subdivision plan while another application for subdivision of the same
113 or substantially the same parcel is pending before the commission. For
114 the purposes of this [section] subsection, an application is not "pending
115 before the commission" if the commission has rendered a decision with
116 respect to such application and such decision has been appealed to the
117 Superior Court.

118 (e) If an application involves land regulated as an inland wetland or
 119 watercourse under the provisions of chapter 440, the applicant shall
 120 submit an application to the agency responsible for administration of
 121 the inland wetlands regulations no later than the day the application is
 122 filed for the subdivision or resubdivision. The commission shall,
 123 within the period of time established in section 8-7d of the 2008
 124 supplement to the general statutes, accept the filing of and shall
 125 process, pursuant to section 8-7d of the 2008 supplement to the general
 126 statutes, any subdivision or resubdivision involving land regulated as
 127 an inland wetland or watercourse under chapter 440. The commission
 128 shall not render a decision until the inland wetlands agency has
 129 submitted a report with its final decision to [such] the commission. In
 130 making its decision the commission shall [consider] give due
 131 consideration to the report of the inland wetlands agency and if the
 132 commission establishes terms and conditions for approval that are not
 133 consistent with the final decision of the inland wetlands agency, the
 134 commission shall state on the record the reason for such terms and
 135 conditions. In making a decision on an application, the commission
 136 shall consider information submitted by the applicant under
 137 subsection (b) of section 8-25 of the 2008 supplement to the general
 138 statutes concerning passive solar energy techniques. The provisions of
 139 this section shall apply to any municipality which exercises planning
 140 power pursuant to any special act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	8-3(g)
Sec. 2	<i>from passage</i>	8-26

ENV *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill adds the term “due consideration” and makes technical changes. There is no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 5146*****AN ACT CONCERNING INLAND WETLANDS AGENCY REPORTS.*****SUMMARY:**

This bill restores a requirement that zoning commissions “give due consideration” to inland wetlands agency reports when reviewing the following plans or application that involve a regulated wetlands area: (1) a site plan, to help determine the conformity of a proposed building, use, or structure with specific zoning regulations and (2) applications and plans for subdivisions and re-subdivisions. PA 07-102 required that the zoning commissions instead “consider” these reports.

EFFECTIVE DATE: Upon passage

BACKGROUND***Case Law***

In case law, to “consider” is to think with care upon a matter (*Lake v. Ocean City*, 41 A. 427), to reflect on or ponder it (*People v. Tru-Sport Pub. Co.*, 291 N.Y.S. 449). To “give due consideration” to a particular factor necessarily means to give such weight or significance to it as under the circumstances it seems to merit, and this involves discretion (*U.S. ex rel. Maine Potato Growers and Shippers Ass’n. v. Interstate Commerce Commission*, 88 F.2d 780).

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 30 Nay 0 (02/27/2008)